

# Warm Springs Telecom

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WARM SPRINGS TELECOM

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May 10, 2013

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street SW  
Washington, DC 20554  
Re: Connect America Fund – WC Docket No. 10-90

Dear Ms. Dortch:

Pursuant to the Request for Comments Sought on Competitive Bidding Procedures for Action on the Tribal Mobility Fund Auction Scheduled for October 24, 2013, Warm Springs Telecom is submitting the following comments for inclusion on the record of the proceedings.

If you need to contact me for any additional information, please contact me on 503-997-1685.

Thank you,

Sincerely,

*Marsha Spellman*

Marsha Spellman, JD

Regulatory Director,  
Warm Springs Telecom

Before the  
Federal Communications Commission  
Washington, D.C., 20554

In the Matter of	)	
	)	
Tribal Mobility Fund Auction	)	AU Docket Number 13-53
	)	
Comments on Competitive Bidding	)	
Procedures for Auction 902	)	

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**COMMENTS OF THE WARM SPRINGS TELECOMMUNICATIONS COMPANY, dba WARM  
SPRINGS TELECOM, ON THE COMPETITIVE BIDDING PROCEDURES AND CERTAIN PROGRAM  
REQUIREMENTS OF AUCTION 902 OF THE TRIBAL MOBILITY FUND PHASE I AUCTION  
SCHEDULED FOR OCTOBER 24, 2013**

**I. Introduction**

Pursuant to the Public Notice DA 13-323, requesting comments on the Tribal Mobility Fund Auction, Warm Springs Telecom submits these comments regarding the reverse auction procedures and related programming issues.

Warm Springs Telecom (WST) is a telecommunications company wholly owned by the Confederated Tribes of Warm Springs in Oregon, providing landline and broadband internet services. After many years of inadequate telecommunications services, the Tribes began examining ways to increase these services and ultimately created WST after many years of planning. A tribally chartered corporation, WST is registered as a foreign corporation with the State of Oregon, and certificated as a CLEC through the state of Oregon's Public Utility Commission. It has an ETC certification and receives federal tribal lifeline and Oregon Universal Service Funding. WST received an ARRA BIP award to build this company.

The WST has started down the path of bringing improved services on the Reservation. It has built a hybrid fiber, fixed-wireless network that presently serves almost half of all residents. WST, however, is committed to continue to build out and reach all members living on the reservation. However, as it now stands, one thing WST cannot do is provide mobile telecommunications. Warm Springs has tried hard to bring wireless companies to the Reservation as the Tribal Council and government has asked for this service numerous times. We have gotten limited improved service, but only in the center of the reservation. With 1,000

Sq. Miles, having one tower in the center of the reservation can only do so much. As Warm Springs has been identified as capable of receiving mobility funding, this seems like the perfect opportunity for the Tribes to create a new service offering, mobile telecommunications, for the tribal members and those driving through the reservation on Highway 26 from the Portland area to central Oregon.

However, we have a few comments and questions that need better understanding and resolution before we commit to this. We raise the following issues below:

- How was the number of un-served residents determined?
- Is the funding awarded to the winner of the auction only for the few number of people identified? Can the money be used to create a mobile company to serve the entire reservation?
- Tribes and Tribal enterprises should serve tribal lands.

## **II. Comments on Issues Raised**

### **A. The areas determined to be unserved and the number of unserved residents within these tribal census blocks seem to be arbitrarily determined.**

As indicated in the *USF/ICC Transformation Order* and reiterated in the referenced Public Notice, the “Commission decided to target...Tribal Mobility Fund Phase I support, to census blocks without 3G or better service...<sup>1</sup> on tribal areas which have significant telecommunications deployment and connectivity challenges.”<sup>2</sup> The maps and data included in the auction documentation indicate that Warm Springs, a very rural and geographically challenging reservation, has only one census block that does not have service, and on that one census block there are only 128 homes without service.<sup>3</sup> This is not accurate.

The FCC has chosen to rely on the Mosaik Solutions Data to make these calculations; we question the reliability of that information as we understand that the information provided to Mosaik is data given to them by the Mobile companies and not provided by independent agencies nor the Tribes that live in these areas.

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<sup>1</sup> See March 29, 2013 Public Notice (DA 13-323), *Tribal Mobility Phase I Auction Schedule for October 24, 2013, Comment Sought on Competitive Bidding Procedures for Auction 902 and Certain Program Requirements (Auction 902 Notice)*

<sup>2</sup> *Auction 902 Public Notice* at 2

<sup>3</sup> *Auction 902 Public Notice*, Attachment A-1

We would like to know the stated accuracy of these findings. How were they determined and verified? Warm Springs Telecom knows for certain where the cell sites are in Warm Springs. We also know where people are able to get cell service. We can attest that there is very little service that is more than 2G/Edge and many areas without any service whatsoever. We do not believe that this coverage information is entirely accurate and are concerned that the information understates the unserved and underserved area. By under counting the unserved and underserved homes, we believe that these numbers will limit the amount of funding available to this reservation.

The Warm Springs Reservation is a very large, 1000 Sq. miles land mass in the center of Oregon with all or some of six census blocks within the reservation area. There are 5000 residents living on the reservation. The FCC 902 Auction has identified that there are only 128 residents/homes, who are living in essentially one small area of the reservation, on one census block, that do not receive the requisite mobile, 3-G service. While Warm Springs does receive some mobile services on the Reservation with most of this service in the center of the Reservation, it seems very unlikely that only 128 people do not receive cell service, 3G or higher.

This is not the first time information regarding areas where telecom service is allegedly available, has been used in identifying funding opportunities on the Warm Springs reservation. In fact, the ARRA Broadband Stimulus funding also used a similar metric to determine where funding could be received. In applying for the ARRA money, we had to determine areas of the reservation that did not receive broadband. Companies serving the reservation insisted there was broadband when we knew there was not. Eventually the GFR from Rural Utility Service, sponsor of the BIP funding that WST ultimately received, came to Warm Springs. He found that the advertised broadband speeds that the companies insisted was provisioned, was not accurate. Not only was there no broadband in some areas that the company claimed, but the speeds were not always the broadband speeds as required. We believe this to be the case with mobile services as well.

In fact, the Oregon Public Utility Commission routinely denies ETC status to mobile companies that want to serve the Warm Springs Reservation because they cannot provide ubiquitous service. The only mobile ETCs on the reservation do not provide service to the entire reservation, but only to the center areas. There are not enough cell towers on the Reservation to provide adequate coverage through the populated areas of the reservation. Therefore, there is no wireless carrier that is able to provide service to the majority of the reservation. While we would agree that there is cell coverage in the “centroid” of the reservation, there is no way that there is cell service in the “centroid” of the six census blocks covering the reservation.

Even for the non-technical Tribal Council members, it is clear that there is a need for additional mobile services on the reservation and the Council has raised this as an issue and priority on many occasions. They have been clamoring for additional cell service as the service that presently exists is not adequate to serve the people on the reservation. Significantly more than the 128 identified (out of the 5000 people, or nearly 900 homes) lack mobile services, and of those that receive services, most do not receive 3G or higher. We are concerned that the information included in the Public Notice is not accurate on the Warm Springs Reservation.

B. Does the bidding and subsequent funding only impact the small area identified on the Reservation or does it include bidding and funding to serve the entire Reservation? Should there be one or two rounds of bidding?

The Public Notice indicates that “the Bureaus will use population as the basis for calculating the number of units in each eligible census block for purpose of comparing bids and measuring the performance of Tribal Mobility Fund Phase I support recipients.”<sup>4</sup>

a. We are still unclear on what we are bidding

Are we bidding to build a network for the entire reservation, but the funding only available to build out a network for the identified number of people on the Reservation, i.e. the 128 people you have identified in Warm Springs? The Public Notice indicates that “there are census blocks, aggregated tracks and Tribal lands”<sup>5</sup> which make up the areas that can be funded as part of the auction. How is it determined what can census blocks be aggregated or can we consider the entire reservation as all of the aggregated blocks? As Warm Springs has very large census blocks, (six entire and partial blocks covering 1000 Sq miles), can we aggregate these as the entire reservation?

Is this money available to use to provision a new company on the reservation that will serve the entire reservation? Building a network requires building towers, provisioning equipment, back office support such as billing and customer service and the necessary staff that will do all this work, initially and on-going. Warm Springs Telecom is an existing ETC and has much of the manpower and some of the infrastructure in place, including towers that are being used by the Tribes for the telco and the public safety radio network. However, it is unclear as to whether the money available to the winning bidder is only to build a network to serve the few people identified on the reservation, as has been determined by the FCC.

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<sup>4</sup> Auction 902 Public Notice at 30

<sup>5</sup> Auction 902 Public Notice at 23

b. We support a single round bid process

In addition, you requested comments as to the bidding process itself. Should it be a single round or multiple round bidding process? We agree with your assessment that few non-tribal companies will bid on this auction, “as to the smaller number of eligible areas, the likely fewer bidders, and the potent bidders...likely to realize the potential gain from strategically shading up their bids to be just low enough to be accepted...”<sup>6</sup> It has been our experience that cellular providers are not really interested in serving a reservation. We have implored existing cellular providers to expand service beyond the center of the reservation, to include areas of the reservation where population exists and people cannot receive service. Keeping these issues in mind, it seems that the bidding process should be a single round, with the priority being tribal companies that want to serve their tribal lands, or companies that partner with a tribe to serve that tribe’s lands.

III. Tribes and Tribal enterprises should serve Tribal lands, when possible.

While it is not possible for all tribes to provide their own services for every reservation, Warm Springs believes that every Tribe has the right to determine its own destiny and choose who provides services to their reservation. As sovereign nations, Tribes should determine who can be on their lands and by extension in this auction, Tribes should also have the right to choose who can provide service on Tribal lands. If a tribe wants to provide service, and has the where-with-all to do so, it should be the wireless provider. If a tribe does not want to provide its own service, for any reason, then the Tribe should at least be consulted as to who is the company they want to have on their lands.

Understandably this auction is to determine a funding mechanism for providing mobile telecommunications services, and as such, there are requirements including ETC, access to spectrum and a letter of Credit that is important. However, we believe that these issues should not be the only issues considered. Warm Springs supports a Tribal process that includes Tribal determination. The FCC has made great strides in working with Tribal Nations through the Tribal Engagement provisions adopted by the Commission.<sup>7</sup> These provisions must be part of this auction, as it will require communication between the winning bidder and the

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<sup>6</sup> Auction 902 Public Notice at 28

<sup>7</sup> Auction 902 Public Notice at 16. 47 C.F.R. § 54.1004(d)(3)

Tribal government over whose land it will serve. In addition, a Tribe or Tribal enterprise that bids on the auction to provide this service will certainly be more likely to be the company of choice by the that Tribal government.

#### **IV. Conclusion**

Warm Springs Telecom and the Confederated Tribes of Warm Springs support the Tribal Mobility fund auction and subsequent funding available to provide mobile services on tribal lands. It has been an issue of concern for many years. The Tribes have encouraged providers to expand their coverage to all the members that live throughout the large Warm Springs Reservation, but to no avail. At this time, Warm Springs Telecom, an ETC registered in Oregon, is exploring the possibility of rising to this challenge to serve the reservation with mobile telecommunications.

We encourage the FCC to re-examine some of the issues raised in this Auction process to accurately evaluate what services are available on reservations, and not take on face value the information provided by the service providers.

We hope that the FCC takes seriously its commitment to Tribes, to enable Tribes in their quest as sovereign nations, to self-determination and prioritize those Tribes with the capability to do so, to provide their own telecommunications services. This might mean the development of a different process of determining funding on tribal lands and recognition of the unique difficulties faced by these underserved populations.

Respectfully submitted,

Warm Springs Telecommunications Company  
dba Warm Springs Telecom

/s/ Marsha Spellman, JD  
Regulatory Director